

DOCKET SECTION

BEFORE THE POSTAL RATE COMMISSION
WASHINGTON, D.C. 20426

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APR 10 12 19 PM '98

POSTAL RATE AND FEE CHANGES,
1997

) Docket No. R97-1
)

REPLY BRIEF OF THE
ASSOCIATION OF ALTERNATE POSTAL SYSTEMS
(April 10, 1998)

In this Reply Brief, the Association of Alternate Postal Systems will respond to the initial briefs filed by the Direct Marketing Association ("DMA"), Val-Pak Direct Marketing Systems, Inc., et al., the Saturation Mail Coalition ("SMC"), the Alliance of Independent Store Owners and Professionals ("AISOP") and the Mail Order Association of America ("MOAA"). In doing so, AAPS will attempt to group the contentions of these parties by issue and to identify the particular briefs to which it is responding.

AAPS Did Not Propose An Increase in the ECR Rate.

Among others, Val-Pak (at 74) and MOAA (at 26) assert that AAPS, through witness Bradstreet, has proposed a substantial increase in the ECR pound rate. Thus, Val-Pak's heading at p. 74 trumpets "Bradstreet's proposal to increase" the pound rate, and at p. 75 it cites transcript page 12023 in support of this proposition. It is clear from the context of Mr. Bradstreet's testimony at that page, however, in which he "supports rejection of the surcharge [for parcel shaped pieces] in conjunction with significant increase in the pound rate," that he is referring to the rates as filed, not to the present rates, which, of course, contain no surcharge to reject. Had Val-Pak

bothered to look at the next page, Tr. 23/12024, it would have found witness Bradstreet's position to be that the Commission should "maintain the present level of relationships. . . ."

In order to make sure that AAPS's position is not misunderstood, it is, as stated by witness Bradstreet, that the present equilibrium in the competitive market for saturation advertising should be maintained by maintaining the pound rate at a level no lower than its present level. AAPS has not urged that it be increased.

The Existence of "Impact" Evidence.

Several parties criticize witness Bradstreet for not providing detailed, numerical evidence for the proposition that a lower pound rate will adversely affect competitors. Thus, Val-Pak (at 75-76), relying upon witness Andrew, contends that Mr. Bradstreet did not "quantify, evaluate or analyze the alleged harm which AAPS members have suffered from Standard ECR Rates and provides no information as to how the proposed rates would harm postal competition." Similarly, MOAA (at 25) claims that AAPS did not support its claim of competitive harm for the "proposed rates" with information on volumes, revenues or profits of the AAPS members. AISOP argues (at 3) that AAPS did not present data on how the "proposed" rates "will injure" its members' businesses.

These claims do not survive even a cursory analysis. First of all, because AAPS has not in this case claimed that its members have suffered harm from the present rates (although they have), it was not incumbent upon AAPS to provide the quantification regarding present rates that Val-Pak and the others assert is necessary. As to the competitive harm from the proposed rates, it is far beyond the resources of a small trade association to sponsor a theoretical econometric analysis of price and cross-

price elasticity effects in the private delivery industry in order to determine how a rate that is merely proposed will hurt participants in that industry. All that witness Bradstreet could practicably do, and in fact did, was to base his view on his long, unchallenged expertise in the industry and to cite (at Tr. 23/11980) the devastating effects of the 1981 rate decrease.¹

In any event, proponents of the reduced pound rate have themselves presented ample evidence of the harm that would befall postal competitors as a result of implementation of this rate proposal, for they repeatedly assert that a reduction in the pound rate would be good for the Postal Service (and, of course, for mailers) by encouraging the shift of material from non-postal to postal delivery. One can hardly assert that the non-postal competitors will lose substantial business and, in nearly the same breath, contend that no showing of potential business loss has been made.

MOAA and SMC also chastise AAPS for allegedly failing to provide significant and requested information. In certain respects, these claims are valid but irrelevant, but in others they are grossly and perhaps intentionally false.

The worst example is MOAA's assertion that witness Bradstreet was "unwilling to give *any information* about the wages paid to employees of his own company to perform delivery functions" (emphasis added), citing Tr. 23/12033. For a party, MOAA, that provided no information about its membership to be critical of a competitive business entity's unwillingness to disclose very specific, proprietary wage information is egregious, especially when, in fact, the allegation about AAPS is simply

¹ As further discussed below, perhaps the SAI studies of private delivery might have proven useful in this regard, but the Postal Service—without opposition from those now clamoring for data—

false. As shown at Tr. 12033, Mr. Bradstreet stated that the wage rates paid to APS employees are proprietary and confidential, but he added that “for your purposes, I can state that the wages that we pay are substantially lower than those paid by the Postal Service.” Surely, this was all of the information that MOAA or any other party needed to mount an argument related to relative wage rates; they did not need the specific wages. It is highly inappropriate for MOAA, in the face of this response, to state that witness Bradstreet was unwilling to provide “any information” about wages, when he in fact provided the key piece of information that MOAA would need.

Nearly as inappropriate is MOAA’s assertion (at 25) that witness Bradstreet was “unwilling to provide information on weight distribution of members’ materials,” citing Tr. 1203 [sic]. Assuming that MOAA intended to cite Tr. 12030, we would point out that witness Bradstreet was not “unwilling” to provide the requested information. He was *unable* to do so, because AAPS does not collect or maintain that information, as might be expected of a small trade association.²

In similar fashion, SMC (at 40) asserts that neither the newspaper nor alternate delivery industries presented information about pricing. We note that Mr. Buckle, the witness for SMC, when asked to provide support for his statement that the cost of private delivery in New York is lower than mail costs, refused to provide that cost as “proprietary.” Tr. 23/12110. We note, as well, that SMC’s largest member – Advo – which is in the alternate delivery business as well as in the mailing business, also failed

has steadfastly refused to make them public.

² Similarly, witness Bradstreet was not “unwilling” as alleged by MOAA (at 26) to provide a schedule of delivery rates. There was no such schedule to provide. Tr. 12037.

to provide any alternate delivery pricing information to support its claims as to the nature of such pricing.

The irony in this regard is that information concerning the nature of the private delivery industry, its competitive position, its health, and its prices was undoubtedly available, having been studied and accumulated by the only party in this case having the resources to do so – the Postal Service. Yet the Postal Service, as in Docket No.. MC 95-1, refused to provide the results of the SAI study it had commissioned, and the parties decrying lack of information in the record – including SMC and MOAA - did nothing to support AAPS's efforts to obtain that information for the record.

The lack of information in the record, however, did not stop these parties from making unsupported claims about what, they speculate, it might show. Without citation of anything, SMC contends (at 8) that the alternate delivery distribution of retail advertising is a "healthy, growing and increasing threat" to the mail.³ Similarly, MOAA – of course without any citation to the record or any other cognizable evidence – contends (at 30) that, at the proposed rate levels, "the newspapers and the alternate delivery companies will still be able to compete effectively on price." Furthermore, without any information on that price, it is able to conclude (at 30-31) that the proposed rates "will not wipe out the price advantages enjoyed by competitors."

In arguing that there is no proof of a competitive impact from lowering the pound rate, MOAA and SMC ignore the contentions of the Postal Service, recognized by Val-Pak (at 12-13), that one of the very reasons for the proposed reduction is the

³ This unsupported claim is made by the same party that decries "unsupported supposition." SMC Initial Br. at 35.

effort of the Postal Service to improve its competitive position (citing Moeller, USPS-T-36 at 26). See also witness Haldi, at Tr. 27/15082-85.⁴

A telling, if silly, confirmation of the potential for adverse competitive impact can be found in SMC's remarkable claim (at 16) that "[n]oticeably," opposition to the reduced pound rate does not arise in the mailing community but from competitors. My goodness, what did they expect? Let's see: the Postal Service has proposed a very big reduction in a postage rate, and mailers do not oppose it, but competitors do. Undoubtedly, if the Postal Service had proposed a large *increase* in that rate, mailers would oppose it, and competitors would support it. We do not understand why either phenomenon is worthy of notice, except if it is to reinforce the conclusion that competitors will be hurt, and the Postal Service will be benefited (at least in terms of volume), by an unjustified reduction in the ECR rate.

By Any Measure, A Reduction in the Pound Rate Is Inappropriate.

Val-Pak (at 75) and MOAA (at 28) cite SMC witness Buckle's testimony for the proposition that AAPS witness Bradstreet's historical rate comparison is unsound, given its starting point. But, as demonstrated in the AAPS initial brief, even using a starting point most favorable to the saturation mailers – the time right after the R87 rate increase went into effect – the saturation rate has increased at the same rate as the CPI, which means that any reduction as proposed by this case would create the very relationship that witness Bradstreet claims exists. A similar response is appropriate to

⁴ SMC (at 5-6) stresses the importance of saturation mail availability to business and consumers, yet it appears oblivious to the competitive benefits to business and consumers of multiple options for the distribution of hard copy advertising. SMC and its allies would undoubtedly be quite pleased by ECR rates that created a *de facto* monopoly in the Postal Service.

MOAA's claim (at 27) that, since the creation of the saturation category, saturation rates have changed at the same rate as first class letter rates. If that trend were to continue in this case, and if the saturation rate were to continue to increase at the same rate as the first class letter rate, AAPS would have no problem. But when a reduction of as much as 18% is being offered to some saturation mailers, while first class mailers would see an increase, the historical equality cited by MOAA will be eliminated.⁵

Unit Cost Contributions Must Be Considered.

The saturation mailers take divergent approaches to the question of cost coverage. Val-Pak, for example, extensively discusses percentage cost coverage in its effort to obtain a lower saturation rate, without even mentioning unit contribution data. DMA, on the other hand (at 46-47) recognizes the phenomenon but totally misstates witness Bradstreet's testimony. It claims (at 47) that witness Bradstreet "acknowledges" that unit cost contributions are relevant only "in extreme cases," citing Tr. 23/12071-72. At that point, the witness was responding to questions from Commissioner LeBlanc, and he provided what was clearly an extreme example to demonstrate his view that, the lower attributable costs become due to worksharing, or for other reasons, the more important it is to look at per piece contribution. Nowhere did the witness even come close to acknowledging that unit cost examination is relevant only in extreme cases, as his testimony at Tr. 23/12006-008 makes abundantly clear.

⁵ We would add that only because the Postal Rate Commission refused to reduce rates as requested by the Postal Service can the MOAA claim even be made.

AAPS Witness Green's Testimony Has Been Misconstrued.

Both Val-Pak (at 75) and MOAA (at 28) draw inappropriate conclusions from AAPS witness Green's testimony that, because he is involved in hand-delivery, he does not know the precise weight of his pieces and that the cost of mailing his heavy-weight pieces at the pound rate would be "prohibitive." These parties conclude from this testimony that weight is an unimportant factor in alternate delivery and should be a less important factor in postal delivery.⁶

In doing so, these parties take witness Green's testimony very far from its context. First of all, it should not be surprising that witness Green did not know the precise weight of his pieces because he does not pay postage by the ounce. But this does not mean that his costs are not weight-driven, because, presumably, Mr. Green would accept additional pieces and thus additional weight only if the revenues from such pieces exceeded his costs, which is exactly what mailers attempt to do. Moreover, the fact that Mr. Green would find the pound rate too high for mailing his heavier pieces should not be surprising, inasmuch as he has already incurred the sunk costs of establishing his own private delivery network. To then turn around and mail certain pieces would clearly not be cost effective. What witness Green's testimony does not stand for, although for MOAA's argument to be valid it would have to, is that, starting from scratch, it would be "prohibitive" to mail heavy pieces rather than to

⁶ Val-Pak (at 75) has apparently read witness Buckle's testimony, where he stated that witness Green's testimony proves that weight has little impact upon the rate he charges, but not witness Buckle's cross-examination (Tr. 32/17250-51), where he admitted that the testimony said nothing about the rates charged by witness Green's company.

establish an alternate delivery system to deliver them. In fact, the proof that mailing is not prohibitive is that so many pieces are mailed (including four out of five by witness Buckle).

Advo Witness Crowder's Testimony Does Not Refute Mr. Bradstreet's.

Val-Pak (at 76) and SMC (at 36-37) cite Advo witness Crowder's testimony as totally refuting Mr. Bradstreet's explanation of how and why the added weight of saturation pieces increases carrier street costs, contrary to the *assumption* that carrier street time is weight insensitive.

As explained in AAPS's initial brief, Mr. Bradstreet, in response to a USPS interrogatory providing the assumption, discussed a route containing 600 addresses and 10 loops, or 60 addresses per loop. Witness Crowder, according to SMC, countered that the average loop contains only 25 stops, with 12 ounces of mail per stop.⁷ But because Ms. Crowder also testified (Tr. 18327) that the average weight per "delivery rather than stop" amounted to 6.6 ounces, it follows mathematically (but see Tr. 34/18371-72) that the *average* stop has two deliveries. Using Ms. Crowder's first example of the *average* 25 stop and 50 *address* route, and using her average of 20 pounds of mail per loop (Tr. 18/326), it again follows mathematically that an additional saturation piece of only 5 ounces would be sufficient to push the weight to above the 35-pound limit. In addition, of course, by using the average figures in this example and in her "residential loops" example (Tr. 34/18327), Miss Crowder does not provide

⁷ Bear in mind that the data upon which this calculation is based are very suspect, consisting of a sample of only 52 routes. Tr. 34/18370. That hardly qualifies as a study of the impact of weight on carrier street time.

sufficient information to determine for what percentage of loops additional weight causes additional costs.⁸

CONCLUSION

For the reasons set forth in the testimony of AAPS witnesses Ken Bradstreet and Joe Green, and for the reasons set forth in the AAPS briefs, the Postal Rate Commission should reject the request of the Postal Service for a reduced pound rate for ECR mail.

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April 10, 1998

⁸ Even though she has discarded the 17% of loops with 10 or fewer stops from the Foot Access Test data, the remaining average of 29.4 stops contains an unidentified number of loops with far more stops and those loops would be most susceptible to increased costs as weight increases.

CERTIFICATE OF SERVICE

I hereby certify that I have on this 10th day of April, 1998, served the foregoing document on all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.

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